

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA

BENITO FEBRE,)	1:05-cv-00563-OWW-SMS-P
)	
Plaintiff,)	
)	
v.)	FINDINGS AND RECOMMENDATION
)	RE DISMISSAL OF ACTION FOR
GEO GROUP INC., et al.,)	FAILURE TO PROSECUTE AND
)	FAILURE TO STATE A CLAIM FOR
Defendants.)	RELIEF
)	(Doc. 7)

Benito Febre ("Plaintiff") is a federal prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971). The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 72-302.

On August 1, 2006, the Court issued an Order dismissing Plaintiff's Complaint and requiring Plaintiff to either file an Amended Complaint curing the deficiencies identified therein OR otherwise notify the Court in writing of his wish to voluntarily dismiss the case, within thirty (30) days from the date of service of that Order. On August 15, 2006, the Order served on

1 Plaintiff was returned by the U.S. Postal Service as
2 undeliverable. A notation on the envelope indicated: Return to
3 Sender - Inmate Gone.

4 Pursuant to Local Rule 83-183(b), a party appearing in
5 propria persona is required to keep the Court apprised of his or
6 her current address at all times. Local Rule 83-183(b) provides,
7 in pertinent part:

8 If mail directed to a plaintiff in propria
9 persona by the Clerk is returned by the U.S.
10 Postal Service, and if such plaintiff fails
11 to notify the Court and opposing parties
12 within sixty (60) days thereafter of a
current address, the Court may dismiss the
action without prejudice for failure to
prosecute.

13 In the instant case, more than sixty (60) days have passed since
14 Plaintiff's mail was returned, and he has not notified the Court
15 of a current address.

16 In determining whether to dismiss an action for lack of
17 prosecution, the Court must consider several factors: (1) the
18 public's interest in expeditious resolution of litigation; (2)
19 the Court's need to manage its docket; (3) the risk of prejudice
20 to the Defendants; (4) the public policy favoring disposition of
21 cases on their merits; and, (5) the availability of less drastic
22 sanctions. Henderson v. Duncan, 779 F.2d 1421, 1423 (9th Cir.
23 1986); Carey v. King, 856 F.2d 1439 (9th Cir. 1988). The Court
24 finds that the public's interest in expeditiously resolving this
25 litigation and the Court's interest in managing the docket weigh
26 in favor of dismissal. The Court cannot hold this case in
27 abeyance indefinitely based on Plaintiff's failure to notify the
28 Court of his address. The third factor, risk of prejudice to the

1 Defendants, also weighs in favor of dismissal, since a
2 presumption of injury arises from the occurrence of unreasonable
3 delay in prosecuting an action. Anderson v. Air West, 542 F.2d
4 522, 524 (9th Cir. 1976). The fourth factor -- public policy
5 favoring disposition of cases on their merits -- is greatly
6 outweighed by the factors in favor of dismissal discussed herein.
7 Finally, given the Court's inability to communicate with
8 Plaintiff based on Plaintiff's failure to keep the Court apprised
9 of his current address, no lesser sanction is feasible.

10 Accordingly, the Court HEREBY RECOMMENDS that this action be
11 DISMISSED for Plaintiff's failure to prosecute and because the
12 Complaint fails to state a claim for relief.

13 These Findings and Recommendation are submitted to the
14 United States District Judge assigned to the case, pursuant to
15 the provisions of Title 28 U.S.C. § 636(b)(1). Within **fifteen**
16 **(15) days** after being served with these Findings and
17 Recommendation, any party may file written Objections with the
18 Court and serve a copy on all parties. Such a document should be
19 captioned "Objections to Magistrate Judge's Findings and
20 Recommendation." Any Reply to the Objections shall be served and
21 filed within ten (10) days after service of the Objections. The
22 parties are advised that failure to file Objections within the
23 specified time may waive the right to appeal the District Court's
24 Order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

25 IT IS SO ORDERED.

26 **Dated: November 14, 2006**

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/s/ Sandra M. Snyder

UNITED STATES MAGISTRATE JUDGE